

STEVEN L. BESHEAR  
GOVERNOR



RICHARD D. VANCE  
SECRETARY

COMMONWEALTH OF KENTUCKY  
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

MINE SAFETY REVIEW COMMISSION  
132 BRIGHTON PARK BLVD.  
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COMMISSIONERS  
DENISE MOORE DAVIDSON,  
CHAIR  
WILLIAM D. DONAN  
~~OTAN CAVE~~

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GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF MAY 8, 2008: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSCR" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Denise Moore Davidson, and Commissioner William D. Donan were present. Also in attendance was the MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 p.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Counsel for the Kentucky Department of Natural Resources, Office of Legal Services was present representing the Office of Mine Safety and Licensing. General Counsel DNR Mike Haines, his assistant Kari Sutherland, and staff attorneys for OLS were present as counsel for OMSL.
- ❑ The **minutes** for the meeting on **04/18/08** were discussed. Commissioner Donan made a motion for approval, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the minutes.

## **Motions - various;**

- *No motions were submitted for this meeting.*
- **OMSL Motions for Sanctions & Permanent Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**
  - The procedurally similar cases of 07-MSRC-064 **Troy A. Collett**, 07-MSRC-079 **Douglass Couch** and 07-MSRC-181 **Robert M. Schmalz** were called. Each Respondent appeared and participated in the hearing. They each agreed they were out of compliance with the Settlement Agreement incorporated as the Final Order of MSRC. However each demonstrated circumstances where an amendment to enhance the frequency and extend the duration of testing would insure compliance in the future. Commissioner Davidson stated she had a conflict regarding Couch but he waived the conflict and agreed to proceed with the hearing. Commissioner Donan made a motion to **grant** the motions to **amend the settlement agreements**, which were seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**
  - The Commission discussed the procedurally similar KRS 351.120(12) appeals of: 08-MSRC-243 **Jared Stanley**, 08-MSRC-078 **Tommy Dewayne Seals**, 08-MSRC-121 **David Shawn Sumner**, and 08-MSRC-135 **Joey S. Hackney** when called. They either appeared or phoned prior to the hearing and moved for **continuances** to June **May 12**. Commissioner Donan so moved as to each. These were seconded by Commissioner Davidson. The motions carried unanimously, and were so Ordered. Commissioner Davidson signed the Orders.
  - The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 08-MSRC-073 **Matthew Terry**, 08-MSRC-097 **Warren King**; represented by Hon. Joseph Lamb, 08-MSRC-113 **Shane Gross**, 08-MSRC-114 **Steven Epling**, 08-MSRC-117 **Benjamin M. Wagner**, 08-MSRC-127 **Jacob A. Roberts**, in turn. Every one of these Petitioners appeared and tendered a **Settlement Agreement** and Motion to Approve the same. Commissioner Davidson requested and received a wavier from each Petitioner for the determinations on Turner and Miller citing a conflict. Commissioner Donan made a motion to **grant**, each of their settlements

which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- The Commission called **Randal Holbrook** in 08-MSRC-112 and he requested a hearing. Holbrook testified that he tested positive for an expired prescription given to him by his treating physician, a technical violation of company policy. He presented a document from his treating physician stating that she prescribed the pain killer shown in the drug test and that he now had a prescription for another and that it should not interfere with his ability to work. OMSL stated it had no proof to the contrary. Commissioner Donan made a motion to **grant**, his motion to **sustain and reinstate** his certifications which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.
- The Commission called also the KRS 351.120(12) Petition for Appeal of 08-MSRC-067 **Travis White**, and 08-MSRC-089 **Johnny Ray Sexton** who were duly notified and scheduled for the hearing *they* requested for this meeting. **None** of them **appeared** and were each Ordered to **Show Cause** as to why their certificates should not be revoked upon order at the next meeting. Commissioner Donan made the motion for Show Cause which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Orders.
- The Commission also considered 07-MSRC-133 **Gary W. Pendergrass**, 07-MSRC-182 **Michael Beverly**, 08-MSRC-049 **Joseph Earl Carroll**, 08-MSRC-062 **Timothy Wayne Combs**, 08-MSRC-072 **Brian K. Charles**, and 08-MSRC-098 **Jeffrey Ratliff Jr**; who failed to appear despite notice at the last meeting and also failed to appear, answer or participate in the Show Cause set for this meeting. Commissioner Donan made the motion to **revoke** which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

**The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” revocations:**

- The Commission called and then granted the motions by OMSL for **revocation** in the following procedurally similar cases. No one appeared on behalf of any Respondent miner and no Respondent appeared despite notice by certified mail with a return as to each; 08-MSRC-094 **Kevin L. Slone**, 08-MSRC-095 **James P. Owens**, 08-MSRC-108 **Matthew A. Cline**, 08-MSRC-119 **Bobby R. Gray**, 08-MSRC-120 **James L. Hughes**, 08-MSRC-125 **Terrence M. Huff, Jr.**, 08-MSRC-129 **John Accord**, 08-MSRC-130 **Gene**

**A. Shearer, Jr.**, and 08-MSRC-133 **Joel E. Sturgill**. Commissioner Donan made a motion to **grant**, each of the OMSL Motion for Revocations which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- The Commission also ruled favorably on the proposed **settlement** tendered in the following OMSL Show Cause hearings for revocation: 08-MSRC-132 **Bobby Davis Poston**. Commissioner Donan made a motion to **grant**, the OMSL Motion for settlement which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.
- OMSL also moved to **continue** 08-MSRC-118 Dustin O. Mullins to June 12, 2008 for further investigation. Commissioner Donan made a motion to **grant**, the OMSL Motion for settlement which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

**The 11:00 a.m. Docket for “initial denial” pursuant to KRS 351.184(5) for failure of the pre-certification alcohol and substance abuse testing:**

- A hearing was granted in the initial certification denial of **Travis White** 08-MSRC-067 for a positive drug test as part of his application for an additional certification. This was called as above with the other similar drug appeals. White did not appear and has not appeared for several months thus his appeal was set for a Show Cause on June 12. Commissioner Donan made a motion to **Show Cause**, which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

**The 11:00 a.m. Docket for Motions to Reconsider:**

- The matter of 08-MSRC-016 **Tommy L. Cook** was called and he requested a hearing. He stated he did not refuse and had no positive drug tests of record. OMSL called one witness but that witness had difficulty recollecting sufficient details of the event to overcome the presumption in KRS 13B regarding the burden of proof for the removal of a benefit previously granted. Thus Cook won by presumption and Commissioner Donan made a motion to **reinstate** his certificates. Commissioner Davidson seconded and the matter was so Ordered.
- The Commission called 08-MSRC-023 **Jason A. Worley** and he moved for a **settlement**. OMSL agreed and after questioning Hurley accepted the amended settlement agreement with terms enhancing the frequency and extending the duration of testing insuring compliance in the future. Commissioner Donan made a motion to **grant** the motion, which was

seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.

- OMSL also moved to **continue** 08-MSRC-045 **Shannon W. Chaffin** to June 12, 2008 for further investigation. Commissioner Donan made a motion to **grant**, the OMSL Motion for settlement which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order

**The 11:00 a.m. Docket for “traditional” type cases:**

- Upon the call of 07-MSRC-186 **Williard R. Harmon**, OMSL Counsel Hon. Smock informed the Commission that Respondent in the case did not participate in the pre-hearing and moved for a Show Cause. Upon that, the Commission determined that the case should be set for a **Show Cause** to the June 12 meeting. After consideration MSRC determined that this motion should be **granted**. Commissioner Donan so moved, Davidson gave the second and Davidson signed the Order.
- 07-MSRC-198 **Mike Pacholewski** was called upon the Respondent’s **Motion to Dismiss**. Respondent was represented by Hon. Steve Cawood and OMSL by Steve Boyd. After consideration MSRC determined that this motion should be **denied**. Commissioner Donan so moved, Davidson gave the second and signed the Order.

**Petitions for an Order filed by OMSL in roof control cases:**

*None were filed for this meeting.*

**Old Business**

**Ratification of Final Order:** *None were filed for this meeting.*

❑ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday June 12, and the likelihood of one traditional type hearing.

❑ **Status Report & Abeyances;**

*None were scheduled for this meeting.*

## □ Appeals

- The Commission discussed the appeal to Franklin Circuit Court of the Final Order in **Hobert Hoskins** 05-MSRC-007 now 05-CI-01702 in Division I. The Commission was informed that Judge Sheppard Ordered a **briefing schedule**. Counsel for OMSL is to file a Motion to Dismiss for the reason that the case is moot due to the passage of time exceeding the probationary period ordered with no further violations.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Willie "Tick" Sizemore**, et al. Hon. Haines, counsel for OMSL stated that they received a **Final Order**.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed that Hon. Barbara Pauley is filing a **briefing schedule**.
- The Commission discussed the status of the appeal to Franklin Circuit Court of 06-MSRC-005 **McCoy & Short**, 07-CI-1981, Division 1. The matter is being **briefed** by Hon. Larry Moscoe.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated that they were **briefing** the matter.

## New Business

### □ Office & Administrative;

- The General Counsel advised that the **mileage** remains to forty five (45) cents per mile.
- JAVS, the manufacturer of the computerized court reporting system requested renewal of the routine maintenance and updates contract.

### □ Training

- **Required Hearing Officer Training:** Wednesday June 25 2008. Initial training. The required KYOAG annual training hearing officer for all MSRC Commissioners and the General counsel has been scheduled for **June 25, 2008**.

- ❑ **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the Probable Cause Determinations and then reconvened to issue orders below as appropriate.

- ❑ **Probable Cause Determinations**

The following case was discussed and then the Commission determined that Probable Cause was appropriate: 08-MSRC-123 **Osborne & Sandlin**, and 08-MSRC-128 **Johnson, et al** was amended. Commissioner Donan so moved, Davidson gave the second and Davidson signed the Order.

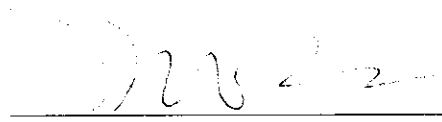
- ❑ **Settlement Agreements**

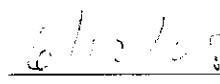
The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday June 12, 2008**.
- ❑ **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday June 12, 2008. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:

  
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Chair Denise Moore Davidson  
Mine Safety Review Commission

  
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Date